

# POLICY AND MANAGEMENT ISSUES

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- 1 A number of policy and management issues were raised in submissions that are of a general nature, although many of the issues flow through into the individual fishstock and regulatory proposals:
  - a) Management of recreational and customary catch;
  - b) Approach to localised sustainability issues;
  - c) Rate of rebuild;
  - d) Management above  $B_{MSY}$ ;
  - e) Precautionary Approach;
  - f) Use of Anecdotal Information;
  - g) Consideration of the Purpose and Principles of the Act; and
  - h) Compliance Plans.

## Management of recreational and Customary Catch

### *Submissions*

- 2 Four major issues arise in the submissions: the absence of monitoring and information about the recreational catch; the failure of management measures to constrain or manage recreational catch to allowances; the absence of information on customary catch and the shortcomings of the current method of calculation to derive the customary allowance; and the impact of each of these issues on other sectors, on sustainability, and on the Crown's Treaty responsibilities.

### *Information on recreational catch*

- 3 **The New Zealand Seafood Industry Council** (SeaFIC), **Sanford Limited** (Sanford), **Northern Inshore Fisheries Management Company** (Northern Inshore), **Pagrus Auratus Company Ltd** (Pagrus Auratus) and **Snapper 8 Company Ltd** (SNA8 Co) submit that the Ministry of Fisheries (MFish) has continued to fail to adequately monitor recreational fishing, and that estimates of recreational catch are little more than a "stab in the dark".
- 4 **Te Ohu Kai Moana Trustee Limited** (Te Ohu) submits the current system for gathering estimates of recreational catch is grossly inadequate. Even MFish considers the surveys conducted to date highly spurious. However, given that it is the only information available upon which to base an estimate it is utilised in the assessment process.
- 5 Northern Inshore submit that the lack of information leads to significant uncertainty surrounding the use of available recreational data. The advice to the Minister on the use of recreational catch data is contradictory in cases with that contained in the 2005 Plenary documentation.

- 6 SeaFIC, Pagrus Auratus, Te Ohu and Northern Inshore recommend that priority should be given to obtaining credible information on non-commercial catch levels and trends in shared fisheries. For Northern Inshore, this means that MFish should provide clear advice as to the annual monitoring programmes that will be put in place to monitor and manage recreational allowances as part of the IPP in all cases and specifically where a reduction in recreational catch is proposed. SeaFIC and Pagrus Auratus suggests that only once there is a mechanism in place to accurately account for recreational fishing effort (e.g., a licensing system), will a sound basis for reliable recreational catch estimation be established.
- 7 The information collected as part of an improved monitoring programme needs to be made available in a timely manner (i.e., at least annually) so that it can feed into stock assessment processes. SeaFIC is not confident that current research projects for recreational fishing initiated by MFish will deliver information of the required quality or timeliness.

### *Managing recreational catch*

- 8 **SeaFIC, Te Ohu and Northern Inshore** submit that where sustainability concerns result in a reduction of the total allowable catch (TAC), the reduction must be accompanied by appropriate and effective management measures to ensure that recreational catch is constrained within the reduced allowance. Given that controls in the recreational sector are currently limited to bag and size reductions, Te Ohu consider it is time to address the question of what are reasonable daily bag limits and size restrictions for each of the species under review.
- 9 SeaFIC is disturbed to see that the analysis and discussion in the IPP appears to accept the historical management failings of recreational fishing as inevitable, and – even more disturbing – to assume that recreational fishing will never be managed effectively.
- 10 The **SNA8 Co** submits that the Minister’s obligation is more than just setting the various sector allowances such as customary, commercial and recreational catch limits, he is also required to ensure that the catches are kept within these allowances. This includes setting effective recreational management controls such as bag limits, and minimum size limits and monitoring these. The SNA 8 Company Ltd also notes that the Minister has a greater obligation to manage recreational catches both now and in the future. This needs to be achieved by introducing more effective management controls to maintain catches within levels of allocation. It is also the Minister’s obligation to monitor catches to ensure allocations are constrained.
- 11 Te Ohu states that at present there is no integration between the poorly estimated recreational allowance and input controls (i.e. bag and size limits). For full integration to occur, the recreational sector would need to be moving in the direction of output controls, equivalent to those imposed on the commercial sector. The Minister must commence a process that is designed to explore restraint options which are best suited to the full integration of the recreational sector into the QMS.

### *Information on customary catch*

- 12 **SeaFIC** and **Northern Inshore** note that the customary allowance is not intended to cover all catch taken by Maori – as the customary fishing regulations have not been fully implemented in Northland, the customary allowance only covers catch taken under the authority of regulation 27. In the absence of recreational management controls for some fisheries, then there is no requirement or incentive for an application for customary use of this stock. In these instances, it is highly likely that catch taken for customary purposes is currently taken outside of the authority of regulation 27 under the general recreational allowance and is, therefore, counted twice in the allowances.
- 13 **SeaFIC** and **Te Ohu** note that the customary estimate and allowances are based on a proportion of the recreational estimates/allowances. Both consider this method unacceptable because it is premised on the assumption that the recreational information is valid or reliable. **Te Ohu** notes that **MFish** is inconsistent in the application of the policy. **Northern Inshore** believe that this practice of extrapolation of new information based on bad information has no place in responsible fisheries management when better sources of information are readily available.
- 14 **Te Ohu** proposes that there is a much better way to arrive at customary estimates and therefore set improved allowances. **Te Ohu** acknowledge that regulation 27 of the amateur fishing regulations, which provides a temporary measure to harvest for hui and tangi, has no reporting requirements. However, **Te Ohu** is aware that (especially in the South Island) the customary regulations have been in operation for some time. Given this, **Te Ohu** do not understand why there is no information about customary catch in recent IPPs.
- 15 **SeaFIC** finds the lack of customary catch information particularly disappointing as the kaimoana customary fishing regulations are potentially capable of delivering improved information on customary catch levels. There should be more commitment in **MFish** to getting the reporting of customary catch working properly and feeding into the stock assessment and sustainability processes. Evidence of this lack of commitment is demonstrated in the decision to not require compulsory reporting of catch taken under regulation 27. **SeaFIC** submits that the reporting of actual customary catch taken (whether under regulation 27 authorisations or under the customary fishing regulations) should be compulsory (at an aggregate level at defined intervals) so as to provide better information for the sustainable management of fisheries.
- 16 **Te Ohu** also submits it is aware that the framework for customary fishing is incomplete in its implementation, particularly in the North Island. However, they suggest two possible avenues for establishing a customary allowance on a temporary basis until the customary framework is fully implemented throughout New Zealand:
  - a) First, working directly with each of the recognised iwi organisations having an interest in each QMA, backed up with additional work through the relevant iwi forums that have been established under the **MFish** Treaty Strategy (which we assume would involve those organisations) would be a good way to start.

- b) Second, in Te Ohu’s submission on North Island eels entering the QMS, it recommended that better information is readily available to estimate customary catch and set allowances using the following method:
- i) **Known available information:** Number and whereabouts of marae available from Te Puni Korkiri;
  - ii) **Initial Estimate Formula:** Marae per QMA x average number of hui or tangi per annum x consumption estimate per hui or tangi;
  - iii) **Consumption Estimate:** Some information available from submissions and other surveys undertaken by MFish;
  - iv) **Follow up Survey Verification:** Average number of hui or tangi per annum; consumption estimate.
- 17 Te Ohu states they would be happy to work with MFish to develop these proposals further.
- 18 Northern Inshore fully supports this approach promoted by TOKM. Assessment of marae use can be used to provide an initial estimate and later reviewed as the customary framework of rohe moana and associated reporting is completed across the QMA.

### *Impacts*

- 19 **SeaFIC** and **Pagrus Auratus** state that the lack of information and the failure to manage recreational fishing severely compromises the ability to achieve the purposes of the Fisheries Act in shared fisheries.
- 20 SeaFIC submits that the lack of information on customary catch is an abdication of MFish’s responsibility not only in relation to sustainable fisheries management, but more specifically in relation to effective protection of customary rights. This inability or unwillingness to constrain recreational fishing within allowances has a number of significant consequences for achieving the purpose of the Fisheries Act by ensuring the sustainability of fisheries resources:
- It risks eroding any sustainability benefits intended to be delivered through total allowable commercial catch (TACC) reductions. This is inconsistent with the Court’s finding in the NZFIA case that the Minister must be cognisant of the need to “*restrain recreational fishing in a way which seeks to prevent the commercial sacrifice being caught on recreational hooks*”;<sup>1</sup>
  - It potentially increases the uncertainty in stock assessments (as the unmonitored and unmanaged proportion of the TAC grows), increasing the likelihood of “precautionary” decisions and ultimately destroying the basis for setting TAC/TACCs;
  - It means that the commercial sector inevitably bears the entire costs of TAC reductions in shared fisheries. Reductions in recreational allowance that are not accompanied by management measures designed to ensure actual catch is constrained within the allowance have no impact whatsoever on the

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<sup>1</sup> *New Zealand Fishing Industry Association (Inc) & Ors v Minister of Fisheries* (CA82,83/97, 22 July 1997) page 18.

recreational sector or on the actual level of recreational catch. In the absence of any management controls, no option for reduced catch have any impact at all on recreational fishing. This makes a mockery of the concept of “sharing in the rebuild of the fishery” and reduces the incentives created by ITQ for responsible stewardship of fisheries resources; and

- It results in a *de facto* reallocation of available yield between sectors, even in the case of the so-called “proportional” reduction options in the IPP. Any reallocation of available yield from commercial to recreational fishers (whether deliberate or by default) increases the proportion of each shared fishery that is essentially unmonitored and unmanaged, increasing the sustainability risk to the stocks – a detrimental outcome for all sectors.

- 21 Lack of credible information on non-commercial catch is of particular concern to SeaFIC because the costs of these information failings are felt almost entirely by the commercial sector. Absence of reliable information on non-commercial catch leads to uncertainty in stock assessments, which in turn is used as a justification for precaution in decision-making, leading to reduced TACs and TACCs. In these circumstances the incentives for industry to collectively fund research or management initiatives for the commercial share of the catch (either through cost recovery levies or directly through fisheries plans) are severely reduced, as the potential benefits of any industry expenditure will be undermined and compromised by the lack of reliable Crown-purchased information on non-commercial catch.
- 22 **Northern Inshore** recommends that if the policy of MFish is to make allowances based on current use each time a stock is reviewed there is no incentive for other sectors not to seek to continually expand in the absence of management and monitoring their catch.
- 23 Northern Inshore believes that in the current environment of poor information, monitoring and management of non commercial catch, the Minister should be clearly advised that setting or varying arbitrary non-commercial allowances can not equate to credible fisheries management nor can statements relating to non commercial catch in the IPP be substantiated.
- 24 Northern Inshore also submits that where recreational catch appears to be increasing MFish proposes a previous underestimate rather than assuming the responsibility for poor management and monitoring of the current recreational allowances. If the recreational catch is to be treated in this way then it is tantamount to the Minister adopting a policy of unconstrained recreational fishing to the detriment of the commercial sector. Such an approach is untenable to Northern Inshore. An inevitable consequence of this approach is a fundamental undermining of the integrity of the QMS if catches set allowances rather than allowances constraining catch.
- 25 **Sanford** states that in the absence of a constrained and monitored recreational catch, the commercial sector is being significantly affected by this ineffective management.
- 26 **Te Ohu** states that the recreational sector is the only sector that enjoys all the privileges of fishing and yet has no responsibilities towards the sustainable management of New Zealand’s fisheries, other than to comply with rules set by MFish. Therefore in exercising his duties under Article 1 of the Treaty of Waitangi the Minister must take steps to ensure the sustainability of fisheries is assured.

However, after that the Minister must consider his responsibilities under Article II to protect the collective rights of iwi and hapu particularly if they have been enshrined in a settlement such as the Fisheries Settlement, and give those rights priority before making resources available to citizens under Article III of the Treaty.

- 27 A matter of considerable concern to Te Ohu is the lack of any type of reasonable constraint imposed on citizens under Article III of the Treaty of Waitangi by the Minister. Te Ohu agrees that the Minister should take population trends into account as part of his decision-making process. Rather than seeking to provide preferential allocation of TACs to this sector, he should be considering at what point and at what rate restraint must be applied. Unconstrained fishing by this sector will result in the following two consequences. First the fishing industry will be damaged and potentially destroyed if preferential allocation is allowed to continue in the direction that is proposed, and second, the sustainability of the fisheries will become threatened. In both scenarios the Article II rights secured in the Fisheries Settlement will be devalued.
- 28 Te Ohu considers that the approach being pursued by MFish will have the effect of reallocating sector shares in particular fisheries by placing further constraint on commercial fisheries without any equivalent constraint being placed on recreational fisheries.

### ***MFish response***

- 29 Industry submissions are strongly critical of the management of the recreational right and the inability to accurately quantify the level of recreational and customary take. MFish does not accept that management of recreational and customary fishing threatens to erode the sustainability of fishstocks. In the majority of fisheries, recreational and customary take represents a small portion of the total catch. More importantly, a regulatory framework to manage recreational and customary fishing is in place, albeit not as comprehensive or as detailed as with the commercial fishery. Initiatives are underway to improve engagement with recreational and customary fishers, which will in part help improve information on recreational and customary fishing activities and catch levels.
- 30 Recreational fishers are subject to a large number of input controls as are commercial fishers. The primary control is the bag limit. A mixed finfish bag limit of 20 per day applies to some 20 species. Species-specific bag limits apply to eels, grey mullet, snapper, hāpuka, and kingfish. Restrictions are also imposed on set net lengths. This limits the ability of recreational fishers to use bulk fishing methods that result in bag limits being exceeded. In some fisheries, such as kingfish, size limits differ between recreational and commercial fishers in reflection of the different fishing practices that are adopted.
- 31 Industry makes the assumption that when a TAC reduction occurs, there is a mandatory requirement to reduce the bag limit. You are required to consider the information relating to the specific stock. The depleted nature of a stock will affect recreational catch rates. MFish's view is that whether action is required depends on the likelihood that retaining bag limits would lead to the revised allowance being breached. In some instances, recreational take will be within the existing allocation

and therefore no change to the bag limit will be required. In other instances, such as in blue cod fisheries, changes to bag limits have been made.

32 Monitoring of recreational and customary take also constitutes a considerable portion of available compliance resources. Fisheries Officers routinely check to ensure recreational and customary fishers are operating within the bounds of the particular regulatory framework. Considerable effort is allocated to popular recreational areas during summer months. Infringement notices have been added to the penalty provisions of the Act, and are designed to deal with low level offending. In addition, the work of Honorary Fisheries Officers is targeted principally at monitoring recreational fishers.

33 MFish accepts that there is a degree of imprecision about the estimates of recreational catch. However, MFish considers that the best available information is taken into account. Estimates of marine recreational harvest have been determined by a number of research projects:

- a) Regional telephone diary surveys were conducted in the South Region in 1991–92, Central Region in 1992–93 and North Region in 1993–94. These were followed by national telephone diary surveys in 1996, 2000 and 2001. The objective of these surveys was to estimate the recreational harvest by fishstock. The national surveys in 1996 and 2000 were independent surveys. The survey in 2001 was a “roll over” survey using the same fisher prevalence to estimate and harvest weight data, although different diarists were used.

The methodology employed to estimate harvest by fishstock by the diary method involves sampling the fishing population to select diarists who will record their catch over a twelve-month period. It is assumed that the diarists are representative of the general fishing population. It is also necessary to determine the fisher prevalence<sup>2</sup> by which the diarist data can be multiplied up to a whole population level. The fisher prevalence estimate is a critical component of the harvest estimate calculation and has been a major source of potential error in estimating total recreational harvest.

The results of these diary surveys have produced some widely differing estimates of recreational catch for some fishstocks. There is also a difficulty in that all estimates have a confidence range and most estimates have a range of well over plus or minus 20%. A single point estimate must be qualified by the confidence range. A review of the methodology used in these surveys was undertaken by a Technical Working Group, which concluded that the harvest estimates derived from diary surveys should be used with qualification: the regional surveys and the 1996 survey were unreliable because of a methodological error; and, the 2000 and 2001 surveys produced estimates that were implausibly high for some fisheries. However, relative comparisons may be possible between stocks within the surveys.

- b) In addition to the diary information and the fisher prevalence, boat ramp surveys are used to gather data on fish length. This length data is used to convert the diarist data into a fish weight and then this is extrapolated up to the population level to obtain a total recreational harvest weight for each fish

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<sup>2</sup>The percentage of population that fishes.

stock. Boat ramp surveys were run in the North Region in 1990–91, Central Region in 1992–93, North Region in 1994 and nationally in 1996.

- c) Alternative methodologies are being employed to obtain harvest estimates for some key fish stocks. An aerial overflight/boat ramp census method is being used to estimate the recreational harvest of snapper, kahawai, kingfish and rock lobster in QMA 1. However, such a method will only be applicable to some fisheries like snapper in QMA 1 where recreational fishing is predominantly undertaken by trailer boats that can be counted from the air. The method would not be applicable to fisheries where fishing is dispersed over a wide area and a number of methods are used, such as shore fishing, diving and potting, and spear fishing. The problem with estimating recreational harvest in these fisheries is establishing a satisfactory methodology for identifying and sampling fishers.

34 The recreational harvest research projects are major undertakings in terms of cost, and the resources required by the research providers. For example, the 2000 national diary survey cost in the order of \$1.1 million. The cost of the current QMA 1 overflight survey is \$1 million. The diary survey methodology may be the only cost effective method of obtaining estimates of recreational harvest for many fish stocks. MFish considers that the information obtained from the diary surveys is the best available information, provided the limitations are recognised and the appropriate qualifications applied.

35 Management of customary fishing is governed by the customary fishing regulations and, in areas where the regulations are not in place, by Regulation 27 of the amateur fishing regulations, which provide for the taking of fish for hui or tangi. Customary fishers must obtain a written authorisation before they go fishing and they must have the authorisation with them while they are fishing. Written authorisations, under Regulation 27, must be issued by an authorised representative of a marae committee, Maori committee, Runanga or Trust Board that represents the tangata whenua of the area to be fished. The authorisation must state:

- a) Who can take the fish (all harvesters);
- b) Which species can be taken;
- c) Maximum number of each species that can be taken (number or greenweight);
- d) The area where the fish can be taken from;
- e) The place at which the fish must be landed; the dates and times within a 48 hour period on which fishing can occur;
- f) The hui or tangi, and the place, where the fish will be used; and
- g) The signature and name of the person who gave the authorisation to take the fish.

36 The customary fishing regulations establish a system where iwi or hapu manage customary fishing in their traditional areas. Where the customary regulations are in force, take is authorised by the appointed Kaitiaki (Tangata Kaitiaki / Tiaki – North Island and Chatham Islands, and Tangata Tiaki / Kaitiaki – South Island). While Kaitiaki have discretion on determining customary purposes and fishing rules, they must report their activities to tangata whenua regularly and report to MFish the quantities of fish that they are authorising and what was actually taken. Permits must

be made available to Fisheries Officers on request and fishing must be managed sustainably. If a person is acting contrary to the direction of their hapu or iwi or in a manner that affects the sustainability of the fishery, the Minister of Fisheries may intervene and direct the Kaitiaki to conform to a management programme. If they fail to do so they may be removed.

- 37 MFish accepts that the information currently available to set customary allowances is limited. Implementation of the customary regulations and the appointment of Kaitiaki have proceeded steadily but slowly, particularly in the North Island. The information systems established to enable reporting of customary catch are not robust. Currently there is no legal obligation to report in respect to customary take under Regulation 27. However MFish is implementing steps to ensure Kaitiaki do report on the extent of catch authorised and taken under the customary regulations.
- 38 Until there is more information, MFish has developed guidelines to help determine the level of estimates of customary catch. The guidelines have no legislative status and as such, it is not mandatory that they be applied in all cases. These guidelines require consideration of the importance on each species for customary purposes, with catch estimates then based on varying proportions of estimated recreational catches. The guidelines do not preclude a requirement to consider the individual circumstances of the fishery, which has resulted in a departure from the guidelines in individual stocks. MFish considers that the estimates of customary catch represent best information that is currently available.
- 39 There is the risk of double counting catch under both the recreational and customary fishing regulations – that is the counting of catch taken by Maori under the recreational bag limit as customary catch. The catch taken by Maori as recreational fishers is included in the recreational estimates. The contention by industry is that it is also used to support the allowance provided for customary interests. MFish notes that there is a common view by Maori that they are exercising a customary right when fishing in accordance with Maori custom, even though they are not fishing within the strict terms of Regulation 27 or the customary fishing regulations in terms of a customary authorisation or permit. In terms of the strict letter of the law, such fishers are subject to the recreational bag limit and associated controls. MFish accepts that further clarity and discussion with Maori on this matter is required.
- 40 Notwithstanding the systems that are in place, MFish accepts that further steps can be implemented to improve management of recreational and customary fishing. MFish acknowledges the proposal put forward by Te Ohu, and supported by Northern Inshore, to better estimate customary catch. MFish intends to examine the proposal further.
- 41 MFish has appointed customary relationship managers and extension officers to assist Maori to participate in fisheries management. Iwi Forums have been established in four areas with a further eight Forums scheduled to be established by the end of June 2006. Progress to date on the implementation of the customary regulations in the North Island has been slower than expected, but significant progress has been achieved in the Far North. Establishment of the Forums will help provide impetus for the adoption of the customary regulations.

- 42 The issue of improving information on recreational take is a challenging issue. The nature of the recreational fishing right differs significantly from that of both the customary right and the commercial right. Customary fishing is authorised by an appointed individual. Commercial fishing requires a permit and is subject to stringent reporting requirements. Recreational fishing has an open right of access and is not required to report on fishing activity (the single exception being at the Rapoki Bay mātaītai reserve where recreational fishers are required, under a bylaw, to report their catch). There is the difficulty of identifying fishers and the administrative complexities of establishing information systems for such varied and widespread fishing effort.
- 43 Government has investigated a number of options to improve the management of recreational fishing. The Minister in 2001 ruled out licensing as an option for the future management of marine recreational fishing. Estimates for some key fishstocks, such as paua and rock lobster, may only be possible through some form of identification of recreational fishers so that they can be surveyed. There are various ways to achieve this, including the issuing of tags for some species, in which all fish caught of that species would be identified with a tag. A catch estimate could then be derived.
- 44 MFish staff, together with the Minister at times, met with an Amateur Fisheries Reference Group during 2003 to develop options for reform. Although agreement was reached in a number of areas, the Reference Group was unable to provide the Minister with support for any amendment to the current provisions of the Act governing the allocation of the TAC.
- 45 Development of a more robust recreational management framework will require time and resources from MFish and stakeholders, and commitment from Government. The establishment of the regional recreational fishing forums and the Ministerial Advisory panel will provide an opportunity to engage recreational fishers on such matters.

## **Approach to Localised Sustainability Issues**

### ***Submissions***

- 46 **SeaFIC** and **Northern Inshore** consider that there may well be fisheries management problems in northern west coast harbour fisheries, but these problems are more appropriately characterised as local access problems (and possibly local depletion issues), rather than as sustainability issues at a fishstock level. The IPP, as a direct result of the political manner in which the reviews for these stocks were initiated, pre-determines a macro-scale management “solution” (reduction of TAC and TACC) that is totally unsuited to, and bears no logical connection with, the local scale and nature of the problem.
- 47 SeaFIC submits that the mismatch of “problem” and “solution” has three main consequences. First, the proposed TAC and TACC reductions for stocks that are managed across FMAs 1 and 9 will do nothing to improve local access issues in the northern west coast harbours<sup>3</sup>. It will, however, have an adverse effect on commercial

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<sup>3</sup> The IPP fails to provide any analysis as to how a reduction in TAC generally will address the identified local

utilisation of the stocks concerned. Second, it means that sustainability decisions are potentially driven by local issues – an approach that will ultimately undermine the basis of the QMS (which requires sustainability decisions to be based on fishstock considerations at a QMA level). Third, the use of a TAC reduction as a *de facto* management tool to manage local access issues renders the Minister susceptible to legal challenge, particularly when the Minister has alternative management tools at his disposal to address these issues.

- 48 With respect to the latter point, legal advice obtained by SeaFIC, and supported by Northern Inshore, concludes that the proposed TAC and TACC reductions in the FLA 1, GMU 1 and SPO 1 stocks may not be legally justified, particularly with respect to SPO 1.
- 49 SeaFIC contend that MFish is recommending a reduction in TACs based on anecdotal concerns about local access and perceived depletion. The IPP, however, fails to provide either anecdotal evidence from commercial fishers or any analysis as to how a reduction in TACs will address local access or depletion issues. The use of TAC reductions as a *de facto* management tool to manage local access issues, when alternative management tools are available, is not, in SeaFIC’s view, justifiable. **Aotearoa Fisheries Limited** (AFL) also notes that there has been a failure to separate localised issues from the wider fish stock sustainability considerations.
- 50 Part III of the Fisheries Act, including the setting and varying of TACs, relates to sustainability measures. Sustainability measures are defined in the Act as “*any measure set or varied under Part III of this Act for the purpose of ensuring sustainability*”. SeaFIC state that it follows that measures such as a TAC reduction or area closure must be implemented for the purpose of ensuring sustainability before there can be sustainability measures under Part III. In contrast, measures authorising access to the resource, or the administration of the management framework, cannot be regarded as sustainability measures<sup>4</sup>. For example, a management measure that is designed to give effect to an allocation decision made under s 21 is not a sustainability measure under Part III.
- 51 SeaFIC note that MFish’s views the TAC as a tool for moving a stock towards or above MSY. Other measures may also be adopted in conjunction with the TAC, such as a sustainability measure under s 11, but such measures should not be relied on in place of the TAC. The contrary also holds true. The statutory objective in s 13 is unlikely to mandate a TAC reduction for the purpose of some other objective, such as a *de facto* management tool resolving a local access concern. The Minister has other management tools to more appropriately address such issues, such as a localised area closure or other input controls as a sustainability measure under s 11. The Minister also has a general regulatory power under s 297 to address non-sustainability access or administrative concerns. Non-regulatory catch spreading arrangements or alternative management measures could also be investigated and implemented through a management plan process covering the northern inshore finfish stocks, consistent with the approach set out in MFish’s Statement of Intent.

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issues. In the case of SPO 1 the IPP goes so far as to acknowledge that *reducing the TACC to current catch levels may not address these community concerns, which relate to difficulties accessing rig within specific parts of SPO 1, rather than across the whole stock* (page 187, para 89).

<sup>4</sup>This appears to be the view of the Ministry in its Policy Definition of s11.

- 52 SeaFIC notes that there may be circumstances where the Minister would be entitled to vary a TAC under s 13 to address a serious localised sustainability concern. However, the Minister would need to be satisfied, on the best available information, that a TAC reduction was demonstrably an effective option for addressing that particular sustainability concern and moving the stock towards a level that can support MSY. There would need to be a demonstrable *causal link* between the reduction in the TAC and the localised sustainability concern. If there was no evidence that a reduced TAC would result in those concerns being addressed, the reduction would be difficult to justify.
- 53 Northern Inshore support an early view of MFish that the Kaipara fisheries issues is primarily one of access and disparate levels of reliance on Kaipara fishstocks within the commercial sector. The increase of fishing in the Kaipara since the 1990's by fishers that now have a high commitment to fishing in the Kaipara rather than spreading effort more frequently to other areas has resulted in conflict and utilisation concerns in periods of lower fish abundance and different views of management required. This is substantiated in the management proposals put forward by the Kaipara group such as separate QMAs and permits with conditions to control access to the Kaipara.
- 54 Northern Inshore state the entire premise of the IPP for the three harbour stocks is that the Minister can be seen to be doing something by reviewing paper fish at the TAC level rather than a systematic approach to problem definition surrounding localised concerns and implementing specific tools and measures to provide solutions at the local level. The current review is contrived to deliver a positive risk management strategy for the Minister<sup>5</sup> in the face of growing media interest in the Kaipara Harbour issues and growing frustrations of the Kaipara Sustainable Study Group. The Group continues to pursue self-interested solutions in the absence of clear guidance from MFish on the prevailing legislative and policy framework of the QMS.
- 55 Northern Inshore state that the request is politically motivated is further evident in the shift in advice from MFish (MFish Briefing 18 June 2004 Local initiatives: Kaipara Harbour Fisheries Strategy). Early advice is clear that the setting of TACs and TACCs is the primary means of ensuring sustainability at the stock level and that localised depletion be addressed using alternative tools. It also advises that there was some evidence to support localised depletion for the Kaipara but the extent was not clear and there was insufficient information to translate a sustainability concern for the stocks across the entire area. It also provided clear advice to the Minister that measures designed to ensure sustainability at the QMA level may not be effective at providing desired levels of access to fisheries on a local basis. A package of possible sustainability tools were proposed to address local depletion of stocks in the Kaipara. These alternative tools and options clearly are focussed on addressing local sustainability issues and affect those that fish in the specific area of concern. It is therefore disappointing that subsequent advice to the Minister ignores this advice for local solutions and focuses on the blunt instrument of TAC and TACC reviews. Nor are these options put forward anywhere in the IPP as an alternative to TAC changes, cynically interpreted by Northern Inshore as the path of least effort on the behalf of officials.

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<sup>5</sup> Internal MFish comments October 2003

- 56 Northern Inshore submit that the notes from a meeting between MFish officials and Kaipara residents<sup>6</sup> clearly record the promotion of the use of TAC reductions to address utilisation concerns i.e. the lowering of TACCs to restrict access to the fisheries, new entrants and to improve fishing practices. In advice to the Minister on 20 September MFish<sup>7</sup> further develop the premise of the use of sustainability measure to control fishing practices and behaviours. It presents the notion that uncaught TACC equated to open access fisheries for all of these stocks and that to address utilisation issues, the TACCs would need to be constrained. This clearly indicates that MFish identify the Kaipara problem as a utilisation issue not a sustainability concern. That the outcome was pre-determined is also obvious when officials advise the public that they are likely to propose a reduction<sup>8</sup>.
- 57 Northern Inshore state the proposed TAC and TACC reductions for the stocks will not address local access issues in the west coast harbours. The QMS satisfies the primary utilisation objectives by providing fishers to freely enter and leave a fishery with entitlement to catch levels defined by ACE.
- 58 Northern Inshore and **Sanford** submit that the benefits of this system include the flexibility of fishers to plan the structure of their activities and to enter and leave areas based on economics of fishing. Whilst it is still economic for fishers to enter harbours to fish they will continue to do so. Those fishers who chose not to take advantage of the flexibility to plan their activities will continue to be disadvantaged at periods of lesser fish abundance.
- 59 Sanford express concerns about the 'environmental health' of the northern harbours and submit that land based point and non-point discharges to these estuaries could possibly be impacting on the marine life and habitat in these environments. This may be contributing to localised area depletion, which is unrelated to commercial fishing.
- 60 Sanford also state that any subdivision of stock quota management areas to address localised depletion concerns is strongly opposed. Sanford believe the more a species is divided into separate stocks, the less confident they can be that the aggregate assessment reflects the situation for individual sub-stocks (i.e. the species assessment is not necessarily equal to the sum of the stock-based assessments). Compounding this issue is ensuring the sub-area is representative of the stock.
- 61 **The Kaipara Harbour Sustainable Fisheries Management Study Group** also raise the issue of management at the QMA level and controlling harvest levels and ensuring sustainability in local areas. There is no analysis provided for FLA 1, GMU 1 or SPO 1 to determine whether the current QMAs are simply too large to give practical effect to the purpose of the Fisheries Act.
- 62 **Urenui Boating Club Inc.** submits that a problem for them is the boundaries of the management areas, which incorporate such large areas that may be to their detriment. Smaller areas of coastline could be mapped for daily catch allowance.

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<sup>6</sup> MFish notes from a meeting at Pahi Hall, Kaipara 22.7.2004

<sup>7</sup> Briefing to Minister 20 September 2004 Update on Kaipara Harbour Fisheries Management

<sup>8</sup> MFish notes from a meeting with Kaipara Harbour Study Group 15 Sept 2005

## ***MFish response***

- 63 SeaFIC, Northern Inshore and Sanford argue that the problem in the west coast harbours is one of local access and that tools, other than the TAC, should be used to address this issue. MFish notes that it is easy to categorise issues as being one of “localised depletion” or an allocative rather than sustainability issue. In practice, the issue of access problems in the west coast harbours raises both sustainability and utilisation issues. The issue being addressed in the specific papers on FLA 1, GMU 1 or SPO 1 is the extent to which the TAC can be used to help address the current status of these stocks, in particular the situation encountered in the west coast harbours.
- 64 “Sustainability” in the context of the Act is about managing the biological populations (fishstocks) in a manner that ensures harvests can be maintained indefinitely. A TAC that is set under s 13 of the Act is designed to maintain the stock – the biomass of the species that is found within the relevant QMA – at or above a level that can produce the maximum sustainable yield.
- 65 QMAs are defined at the point of introduction of a stock to the QMS. In many cases the management areas reflect considerations relating to administrative efficiency rather than detailed knowledge of the biological distributions of individual stocks of any one species. The standard management areas are considered the most cost effective unit in terms of overall costs of management and enforcement capabilities.
- 66 The establishment of QMAs and TACs do not remove the need to consider other spatial scales for particular management interventions depending on the biology of the species and the needs of differing types of fishers. For sedentary species it may be difficult to manage on a large scale without interventions in addition to the TAC. In areas where both recreational and small and larger scale commercial fishing is important, there will be differing requirements in terms of the desirable size of the area managed or the types of management tools that are employed.
- 67 Typically, a distinction is made between ensuring sustainability at a QMA or stock level and local sustainability issues (commonly referred to as localised depletion). However, in both cases, the lack of availability of the species at the QMA level and discrete areas within the QMA are issues relating to sustainability of the species. The intensity of fishing pressure and the biological characteristics and distribution of the species can lead to localised depletion. That may be a sustainability issue. The presence of localised depletion in a number of areas within the QMA may be a sustainability issue. The serial depletion of areas – the sequential fishing out of the stock area by area may also be sustainability issue.
- 68 The management of localised depletion or localised sustainability problems poses some challenges. Measures designed to ensure sustainability at a QMA level may not be effective at providing desired levels of access to fisheries on a localised basis. A determination is required as to which measures will best address the specific sustainability issue confronted. Section 11 of the Act provides for a range of measures that may be applied at the stock or local level to address sustainability issues.
- 69 Varying a TAC is primarily used to address stock-wide sustainability issues. However, localised sustainability issue may affect the maintenance of the stock at or

above the level that can produce the maximum sustainable yield, and therefore a TAC adjustment may be appropriate. The size of the area and/or the number of areas depleted is relevant to this consideration. In the case of the west coast harbours, there is anecdotal information to suggest that the availability of the fisheries resources within the harbour has declined. This is not an isolated claim, but is a factor cited for many of the harbours on the upper half of the west coast of the North Island. The Kaipara Harbour itself is not an insignificant area. The issue cannot be categorised as one solely related to allocation between sectors or within sectors. The issue raises questions about the underlying sustainability of the fisheries resources in the harbours and the wider QMA. The individual stock papers (FLA1, GMU1 and SPO1) discuss the effectiveness of a TAC adjustment to address the sustainability issue facing the respective stocks.

- 70 MFish accepts that the TAC is unlikely to be the complete answer to resolving the sustainability of the fisheries of the west coast harbours. However, the review of the TACs is intended to form *part* of a process to improve access to those fisheries. Industry refer to the use of other available tools, both regulatory and voluntary, including catch spreading arrangements; area specific catch limits and bag limits; closed areas; controls on methods, size, and season; plus allocative measures such as customary Māori spatial tools. The option of creating a separate QMA for the Kaipara Harbour has also been raised. The ability to use such tools in combination with the TAC to address the specific issues confronting the west coast harbours does not mean that varying the TAC for relevant species is necessarily inappropriate or unlawful.
- 71 MFish notes Sanford’s concerns that land based point and non-point discharges could possibly be contributing to localised area depletion. However, this does not affect the obligation to set a TAC that manages the stock at or above the level that can produce MSY, although it certainly affects the abundance of the stock. Mortality from other sources are adjusted for – just as with certain shellfish species subject to considerable mortality from toxins, the TACC for those stocks are managed to ensure that fishing mortality on the remaining stock is such that MSY is achieved.

## Rate of Rebuild

- 72 In relation to the SNA8 paper, **SeaFIC** is concerned that the consideration of an arbitrary “preferred” rebuild time of 20 years is unjustified, does not take account of balancing factors (e.g. economic impact) and is technically unsound (the Snapper Assessment Working Group included five year projections with a stated belief that it had more confidence in these than 20 year projections).
- 73 The **SNA8 Co** are opposed to the rebuild timeframe proposed, and submit that there is no mandate, management plan or developed strategy for a re-build time-frame to be proposed. The Company submits that the current TAC levels are allowing for the SNA8 fishery to rebuild to MSY.
- 74 **Egmont Seafoods Ltd** submit that the current extraction levels of SNA8 is sustainable, and a TAC that would rebuild the stock in 20 years would have huge economic impacts for the commercial sector.

- 75 **AFL** submit that where a stock is below  $B_{MSY}$ , increasing the size of the fish stock will not necessarily reduce sustainability risk, nor will it necessarily increase annual yield. Whether or not increased yield will result depends on the shape of yield curve, and the estimated starting position on that curve. For stocks with a long, flat top to that curve, increased stock size will neither reduce sustainability risk nor increase yield.
- 76 **option4** submits that the Minister must act decisively to rebuild the SNA8 fishery in the shortest timeframe proposed that ensures intergenerational equity while properly allowing for recreational interests and without further adversely affecting recreational catch or interests in this fishery.

### ***MFish response***

- 77 In setting a TAC, the Minister is required to achieve over time a stock that is at or above a level that can produce MSY for the stock, having regard for the interdependence of stocks. When stocks are below the level that can support the target of at or above  $B_{MSY}$ , s 13(2) requires the Minister to rebuild the stock. The way and rate at which the rebuild occurs must balance social, cultural and economic factors within biological constraints.
- 78 Section 13 provides that fish stocks should be harvested at or above a level that can produce the MSY. The AFL submission contends, in essence, that the cost of rebuilding to MSY exceeds the benefits of doing so. This implies that the purpose of the Act can be equally or better met in some instances by managing a stock below MSY, because managing the stock at or above  $B_{MSY}$  rather than below it neither better ensures sustainability nor better provides for utilisation.
- 79 MFish rejects this general argument on both utilisation and sustainability grounds. A stock that is depleted below that which can produce MSY becomes more susceptible to environmental influences. Environmental variability may affect stock abundance, and a stock depleted by fishing mortality may be subject to additional decline through mortality or recruitment failure in the face of unfavourable conditions (such as climatic patterns, habitat modification, or disease). Managing at or above  $B_{msy}$ , even though that point may be an estimate, provides for a margin of error. Furthermore, the AFL submission ignores the value other users may have in a fishery, and fails to include within the purpose of the act the requirement to maintain the potential of fisheries resources to meet the reasonable foreseeable needs of future generations. MFish consistently interprets this to mean that future generations enjoy stock levels at or above  $B_{MSY}$ .
- 80 Given the specific requirements in the statute, this discussion is largely academic. The purpose of the Act cannot be used to overrule specific requirements; it is to be used to aid in the interpretation of provisions. Put another way, legislation should be interpreted to give effect to the purpose, but the purpose cannot be used to override requirements of other sections. Statutory amendment to specific sections would be required, not ignoring specific provisions in favour of a presumed better match to the purpose statement.
- 81 In this context, MFish notes that the Act explicitly provides for the option of managing below  $B_{msy}$  – ss 14A-14C. However, Parliament has signalled an intent

that managing below Bmsy is appropriate only in very limited circumstances, certainly not in the context of a shared fishery.

- 82 The above means that the obligation to rebuild the stock to Bmsy remains intact; the majority of the submissions address the rate at which this should occur, and (in the case of Option 4) the way this should occur.
- 83 Section 13(2)(b) specifies matters that the Minister must have regard to when determining the rate at which the stock is rebuilt towards the target at or above Bmsy level. The TAC set under s 13(1) is the primary measure ensuring sustainability of stocks, and therefore the Minister is required to establish a TAC that meets the obligations to rebuild, rather than relying on some other sustainability measure authorised under the Act. Other sustainability measures work to support the TAC set under s 13(1). Therefore, it is possible to identify a maximum and minimum TAC level to effect the maximum and minimum rebuild rates, between which would be a rate that the Minister may choose.
- 84 The most rapid rebuild possible is one constrained only by the biological capacity of the species (including longevity and productivity) and any environmental conditions that affect stock size (such as the effect of temperature on stock recruitment) with no fishing mortality (unless this in no way affected the productive capacity of the stock) – in other words, the fishery is closed to fishing.
- 85 At the other end of the spectrum, the TAC may be set at a level that ensures that a depleted biomass is at least trending upwards, towards the  $B_{MSY}$  level. This, in essence, provides the ‘outer boundary’ for what is permissible under the Act.
- 86 In determining the rate of rebuild, the Minister shall have regard to various factors including relevant social, cultural and economic factors. Therefore, within the two boundaries established above, social, cultural and economic factors influence the selection of rebuild rate.
- 87 The application of these various factors to the SNA8 stock are addressed within that paper; this section provides the overview policy position.
- 88 First, MFish interprets the reasonable foreseeable needs of future generations as a stock at  $B_{MSY}$  within a generation span, unless the biological characteristics and environmental factors would prevent such a rebuild timeframe with no fishing. Note that there is no single definition of a ‘generation’, and hence no guidance for what this may mean for an acceptable rebuild timeframe. Despite this lack of definition, a reasonable application of the concept would be about 20 to 25 years, although some dictionary definitions apply up to 35 years as a human generation.
- 89 Second, an assessment of the commercial, recreational and customary costs and benefits of rebuild rates is a valid input, with the following caveats: that the costs and benefits will be different for the various firms within both the commercial and non-commercial sector, depending on their investments, plans and skills; and that the information is uncertain and is dependent on industry submission. However, the Minister must follow the information principles and apply best available information; the quality and certainty of that information is relevant in determining how best to apply it.

- 90 Third, a management plan or strategy may establish an optimal re-build time-frame based on the general consensus of stakeholders, but is not essential, as long as the Minister is satisfied that the TAC selected will rebuild the stock within a timeframe he or she considers to be appropriate. The development of a fisheries plan or future decisions of the Minister may mean that future TACs, and other management measures, will be adjusted as the stock rebuilds.
- 91 Fourth, a decision as to the confidence levels of the rate of rebuild is relevant. The Minister may consider that a 50% probability of rebuilding to Bmsy in a generation to be unacceptable, and request that the certainty of rebuild (with commensurate sustainability measures to effect it) be increased to a level deemed acceptable. As with SNA1, the Minister may select a 70% probability as the minimum acceptable probability level.
- 92 Fifth, the primary way rebuild is controlled is through the selection of an appropriate TAC. The Minister may also consider other sustainability measures to accelerate the rebuild or increase the probability of rebuild, in addition to a TAC adjustment. These could be considered at the same time as the rate of rebuild and TAC decision, or subsequent to it. As part of the rebuild strategy (see point 4, above), the Minister may determine an acceptable rebuild rate with a modest TAC reduction and revisit the issue later to determine any appropriate management measures.
- 93 Sixth, the Minister may consider that the certainty of information is low, and may therefore determine the acceptable rebuild timeframe, but adopt a management approach over a time period in which the information is more certain. Typically the accuracy of stock assessment projections decrease markedly beyond a five-year time frame. As a result, the Minister may determine the rebuild timeframe, and select a TAC in which there is a 90% probability that the stock will exhibit growth over the next five years. The TAC selected must have a reasonable probability of rebuilding the stock within the established timeframe. This strategy could be revisited in light of updated information, as required, to evaluate the status of the stock in relation to Bmsy, and sustainability measures adjusted if needed.
- 94 Seventh, the immediate status of the stock will influence the short-term rate of rebuild. Where there is an immediate risk of stock collapse, a high rebuild rate may be adopted as a short-term management strategy. Thereafter, the rate of rebuild may be later decreased as greater weight is given to social, economic, and cultural factors.
- 95 With respect to alternative rebuild rates there are also economic tradeoffs to be made with respect to short and long term investments. SeaFIC and others claim that long-term rebuild rates are a preferred option as a consequence of the short-term revenue losses with reductions in the TACC as a consequence of the shorter rebuilds. A shorter rebuild generally is preferred by the recreational sector given the immediate benefits from a larger stock size. The Minister needs to assess the socio-economic effects on each sector, and consider how value from the fishery can be maximized given the alternative views. If the information is less than certain, the Minister must act on best available information.
- 96 In some instances, short-term rebuilds may benefit industry greater than the long-term rebuilds. A short-term rebuild may mean lower TACCs in the short-run, but the losses that represents may be outweighed by the gains from a larger stock size, and

increases in the TACC in the longer term. On balance, those that can assess these tradeoffs the best are industry themselves. They have the cost and earnings data to recommend which option may maximize their value from the fishery.

## Management above $B_{MSY}$

- 97 In July 2005 the Minister addressed the New Zealand Recreational Fishing Council conference and advised that the IPP contained options of retaining the status quo or a rebuild strategy for kahawai<sup>9</sup>:

*The other option is underpinned by a new policy idea – that species important to recreational fishers should be managed above, or even significantly above, what fisheries documents refer to as  $B_{MSY}$  – the size of a fish stock that delivers the maximum sustainable yield...*

*This new approach would effectively give greater recognition of recreational utilisation.*

- 98 In response to questions at the conference, the Minister stated that it was Labour Party fisheries policy to manage “*some recreationally important species or shared fisheries, including kahawai... above, or significantly above,  $B_{MSY}$ .*”

## Submissions

- 99 **SeaFIC** and **Northern Inshore** consider that this “new policy idea” of managing above  $B_{MSY}$  does not stand up to scrutiny.

- 100 SeaFIC emphasises that the Fisheries Act is a utilisation statute. Section 8 provides that fisheries resources are to be used, albeit that this must occur in a way that is sustainable (see for example, *Westhaven Shellfish Ltd v Chief Executive Ministry of Fisheries* [2002] 2 NZLR 158 at paragraph [46], and *Kellian & Ors v Minister of Fisheries & Ors* (CA 150/02, 26 September 2002)). It follows that when exercising discretion under the Act in relation to setting a target level for a TAC, the Minister must optimise utilisation to the extent that it is sustainable. When exercising his discretion, the Minister must therefore:

- a) Optimise and not restrict the utilisation of fisheries resources, provided that such utilisation is sustainable;
- b) Consider utilisation from all stakeholders’ perspectives; and
- c) Bear in mind that the Act does not contain any priority or preference for one sector over another.

- 101 SeaFIC and Northern Inshore do not agree that it is appropriate for the Minister to construct a “new policy idea” for shared fisheries, with the expectation that it will favour the recreational sector. Any application of such a policy has the potential to subvert the proper exercise of the Minister’s discretion when setting a TAC under s 13, the purpose of the Act, and the information principles. It also undermines the economic model and incentives underpinning the QMS.

- 102 In the context of the above analysis, SeaFIC considers that the circumstances in which the Minister can legitimately manage a shared stock above  $B_{MSY}$ , are limited to where:

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<sup>9</sup> Minister of Fisheries Speech Notes to 2005 NZ Recreational Fishing Council Conference 8 July 2005.

- a) An above  $B_{MSY}$  strategy is necessary to ensure the sustainability of interdependent stocks; or
  - b) There is a demonstrable consensus amongst stakeholders that an above  $B_{MSY}$  strategy is appropriate to optimise utilisation; or
  - c) There is an overwhelming case based on the best available information that an above  $B_{MSY}$  strategy optimises utilisation (for example where there are demonstrable utilisation benefits of such a strategy to the majority of stakeholders in the fishery).
- 103 In relation to the latter of these circumstances, SeaFIC expects the Minister to make his decision based on cogent evidence of the respective utilisation benefits to all stakeholders. They would expect this to include an appropriately thorough economic analysis of the benefits and effects of such a strategy. Northern Inshore submit that in the absence of a substantive basis or analysis for *each* stock which concludes that greater utilisation would result by managing each stock above  $B_{MSY}$ , there can be no basis for the Minister to evaluate the benefits and effects of such a strategy to all sectors.
- 104 In SeaFIC's view, a departure from the "default" optimum utilisation benchmark of  $B_{MSY}$  would require a compelling case that an above  $B_{MSY}$  target will deliver a greater utilisation benefit to stakeholders generally.
- 105 SeaFIC disagrees with MFish's proposition in the IPP that management above  $B_{MSY}$  would likely be reasonable where the available information suggests that greater utilisation would result and could be achieved by managing according to the preference of the sector that values the resource the most. SeaFIC disagrees because:
- a) the Minister must exercise his discretion in accordance with the purpose of the Act, and thereby be satisfied on the best available information that such a strategy optimises utilisation benefits to stakeholders generally, while ensuring sustainability;
  - b) the relative "value" different sectors place on stocks is highly subjective and difficult to assess; and
  - c) MFish has relied on flawed "non-market estimation" valuations in relation to KAH and other stocks.
- 106 Northern Inshore believe that the IPP is misleading about the level of stakeholder support for the proposal. The IPP states that "*both commercial and non commercial submissions supported this concept in 2004*". Northern Inshore's 2004 submission on the introduction of new species into the QMS did not support setting a management target above  $B_{MSY}$ . Neither did the other industry submissions. The Minister should be informed unambiguously that contrary to the advice contained in the IPP, commercial rights holders do not support the proposed new management target.
- 107 **Sanford** reiterate that they did not support the concept of managing stocks above  $B_{MSY}$  in 2004, and clearly do not today. **Paua Industry Council Ltd** submit that shifting the management of shared fisheries away from maximum sustainable yield will have obvious and detrimental impacts on high value shared fisheries such as paua.

- 108 **option4** and **New Zealand Big Game Fishing Council** support MFish's new policy initiative of managing the biomass of important shared fisheries at, or significantly above, the level required to produce the maximum sustainable yield ( $B_{MSY}$ ). Option4 submits that the Fisheries Act 1996 requires the Minister to set TACs such that the biomass in each QMA is *at or above*  $B_{MSY}$ . This should occur where (as examples):
- a) Stakeholders agree to manage fish stocks above  $B_{MSY}$  (as stated at paragraph 17 of the 2005 kahawai IPP);
  - b) Where the available information suggests that a greater utilisation benefit would result and could be achieved by managing according to the preference of the sector that values the resource the most (as stated at paragraph 17 of the 2005 kahawai IPP);
  - c) Where the scientific information on the status of stocks is uncertain. Applying the precautionary principle (which is mandatory under New Zealand's international obligations) stocks should be managed above  $B_{MSY}$  where stock information is uncertain;
  - d) Where there are reports from fishing clubs and experienced fishers of a decline in catch rates;
  - e) Where there is a significant non-commercial component to the fishery;
  - f) Where the environmental adverse effects of high volume commercial fishing are unknown;
  - g) Species have a relatively low commercial value,
- 109 option4 agrees with the 2005 kahawai IPP which states that the key benefits of management of stocks above  $B_{MSY}$  are the increased availability of fish and the increased size of fish, and that these would both benefit the recreational sector.

### ***MFish response***

- 110 Industry has reacted to prospect of managing shared fisheries above  $B_{MSY}$  with some alarm, in part because the policy has not been formulated through engagement with stakeholders. The first expression of this policy is in the context of operational advice in respect of a specific species, kahawai. The response has been to first challenge the legality of such an approach, and second, to challenge the application of such an approach in the specific fishery. In this section MFish addresses the issue of the policy itself. The kahawai paper addresses the information relating to the specific fishery.
- 111 Catch limits for stocks managed under the QMS usually take the form of a TAC set or varied under s 13 of the Fisheries Act. Section 13 provides a general obligation on the Minister to set a TAC that maintains the biomass at a level that can achieve the maximum sustainable yield (MSY). This requirement reflects article 61(3) of UNCLOS<sup>10</sup>.

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<sup>10</sup> Article 61(3) UNCLOS provides: "Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and generally recommended international minimum standards, whether subregional, regional or global".

- 112 The plain and ordinary meaning of s 13 makes it clear that the Minister has a discretion to set a TAC that maintains the stock “at or above” a level that can produce MSY. Outside of the specific context of sustainability concerns relating to the interdependence of stocks, there is little guidance in s 13 as to the exercise of the Minister’s discretion to set a target level above  $B_{MSY}$ . Although explicit reference is made in s 13 of the Act to interdependence of stocks, the Act is not interpreted as constraining the ability of the Minister to manage a stock above  $B_{MSY}$  only where the interdependence of stocks arises. On this point there is general agreement between SeaFIC and MFish.
- 113 It is clear that the Minister’s discretion must be exercised in accordance with the purpose of the Act in s 8 and be based on the best available information. Therefore, s 13 also needs to be interpreted in the context of the purpose and intention of the Act itself. The Fisheries Act is commonly described as being a utilisation statute in contrast to (for example) the Marine Reserve Act, which is focussed on protection of the marine environment.
- 114 The purpose statement refers to the interests of future generations as a sustainability requirement. Hence, it could be argued that a decision to manage stocks above  $B_{MSY}$  for the purpose of providing for future generations is not inconsistent with the Act. From a utilisation perspective, the Act refers to enabling people to provide for their social, economic, and cultural well-being. While a TAC is a sustainability measure, it cannot be divorced entirely from consideration of the level of utilisation of the resource that is provided. Managing above  $B_{MSY}$  therefore involves consideration of both the sustainability and utilisation aspects that result.
- 115 Management above  $B_{MSY}$  will provide sustainability benefits. A greater proportion of the biomass will be left in the water. This will result in a greater abundance of fish and more larger, productive fish. Managing above  $B_{MSY}$  also provides an increased buffer against overfishing a stock. There is a growing body of opinion in the fisheries science community that managing above  $B_{MSY}$  should be the default starting point. In many instances there is a lack of information to determine with sufficient degree of confidence to monitor the status of the stock relative to  $B_{MSY}$  or to determine what constitutes  $B_{MSY}$  for the stock, let alone be fully cognisant of the ecosystem effects of fishing the stock in question.
- 116 The utilisation benefits include improved catch rates for all sectors, easier access to the resource in different locations, and a greater size range of fish, including more larger size fish. There is probably little debate about these benefits, rather the contention surrounds the circumstances in which management above  $B_{MSY}$  should occur for utilisation purposes (i.e. how to maximise the value from the fishery).
- 117 The key points of difference between the MFish and SeaFIC/Northern Inshore positions are:
- a) Whether above  $B_{MSY}$  can be used to give preference to one sector or whether it is used to optimise use for the majority or all stakeholders; and
  - b) Whether the information supporting the use of above  $B_{MSY}$  is the “best available” or there must be an overwhelming and compelling case to depart from the default “at  $B_{MSY}$ ”.

- 118 MFish contends that the option to manage above  $B_{MSY}$  can be used to provide benefits to the sector that values that resource the most. The Act simply refers to the setting of a TAC that maintains the stock at or above the level that can produce the maximum sustainable yield, having regard to the interdependence of stocks. There is no distinction made between *at* or *above*. The implication is that both are viable options and that there is no intent to fetter the ability to manage above  $B_{MSY}$ .
- 119 SeaFIC's contention that there must be a demonstrable consensus amongst stakeholders to manage above  $B_{MSY}$  is, therefore, not consistent with the wording of the Act. To require an overwhelming consensus imposes a significant fetter on the discretion of the decision maker to manage above  $B_{MSY}$ . No such fetter is stated in the Act, and MFish is reluctant to infer such a fetter in the absence of clear rationale to do so.
- 120 MFish considers that management above  $B_{MSY}$  is appropriate where there is consensus amongst stakeholders to do so (MFish policy definition document for s 13). However, there is no legal requirement restricting the Minister to make this choice where no such consensus exists. Therefore, the law supports the Minister's policy approach to manage above  $B_{MSY}$  for certain fisheries, and MFish will support the Minister in its implementation.
- 121 Industry suggests that managing at  $B_{MSY}$  is the default management option. It is more accurate to state that setting a TAC under s 13 is the default management approach, and although s 13 refers to managing at or above  $B_{MSY}$ , the most common approach has been to manage at  $B_{MSY}$ . To suggest that a departure from the common approach is unavailable as a choice is contrary to the ordinary meaning of the language stated in s 13.
- 122 Industry argue that in setting a TAC you should optimise and not restrict the utilisation of fisheries resources, provided that such utilisation is sustainable. They further argue that s 13 is first and foremost a sustainability measure. It is not intended to act as a *de facto* allocation mechanism. The purpose of a TAC is to determine the amount of catch that can be taken from a stock. The next step is to allocate the resource. At this step in the process, it is legitimate for the preference to be given to one or other sector to reflect the competing demands upon the resource. It is, therefore, inappropriate to use *both* the TAC and allocation of the TAC for allocative purposes. It could be argued that if a decision maker seeks to give preference to a one sector, then that should occur explicitly through the allocation of the TAC, not the setting of the TAC itself.
- 123 MFish's view is that inevitably a decision about optimising use of a resource involves a judgment about a TAC that will best provide for social, economic, and cultural well-being. The Act does not suggest that in every instance the interests of all sectors must be provided for in equal proportions. The decision maker has discretion of how to provide for social, economic, and cultural well-being and in so doing, consider the competing interests involved when determining the TAC to be set.
- 124 However, in some instances managing at  $B_{MSY}$  may not optimise social, economic, and cultural well-being. Managing at  $B_{MSY}$  may result in less than the maximum net social benefit from the use of the resource (i.e. in some instances disadvantage non-commercial users of the resource). Simply seeking to allocate a greater

proportion of the available catch to non-commercial fishers may not necessarily meet the interests of those sectors. Managing at  $B_{MSY}$  inevitably results in a greater reduction of the total biomass of the stock than managing above  $B_{MSY}$ . As a general rule of thumb, the smaller the biomass, the decreased availability of larger size fish and of fish in certain locations. There is a greater risk of localised depletion as a result of intense fishing pressure in areas accessible to non-commercial fishers.

- 125 The second point of distinction relates to the information standard applicable to a decision to manage above  $B_{MSY}$ . Industry suggest a compelling case is required that above  $B_{MSY}$  will deliver “demonstrable utilisation benefits”. MFish questions why a higher information standard is required. It is not clear that such a requirement is consistent with the information principles. The Act suggests that is an expectation that the best available information will be used. A decision maker is required to consider the certainty, reliability and adequacy of the available information. In weighing up the relevant information the decision maker may conclude that there is no compelling case, however, that does not constitute a standard of proof that must be met in all cases.
- 126 The circumstances under which a stock can be managed above  $B_{MSY}$  has not been legally tested. However, as discussed above, you do have discretion to set the TAC so as to manage at *or* above  $B_{MSY}$ . On balance, MFish consider that the wording of the Act makes no distinction between managing at or above  $B_{MSY}$  and that both are legitimate options. In considering which option to adopt, you are required to have regard to the purpose and principles of the Act, weigh up the competing information, and then determine the option you consider to be reasonable in the circumstances.

## Use of Precautionary Approach

### *Submissions*

- 127 **SeaFIC** submit that there is an apparent application of a “double standard” throughout the IPP. This takes the form of one set of rules applying to management proposals that benefit non-commercial fishing (e.g., initiation of review outside of Assessment Working Group process, strong reliance on anecdotal information, no requirement for supporting research etc) and a quite different set of rules for management proposals that benefit commercial fishing.
- 128 If the information principles in the Fisheries Act were to be applied correctly, SeaFIC would expect that decisions providing for non-commercial utilisation would be extremely precautionary in comparison with decisions about commercial utilisation, as a result of the anecdotal nature, uncertainty and unreliability of the supporting information in relation to non-commercial catch. However, the opposite generally applies in this and associated IPPs – the precautionary principle is applied rigorously to TACC decisions but less rigorously (or perhaps not at all) with respect to non-commercial allowances. Non-commercial allowances are retained at current levels or even increased in the complete absence of credible information about actual non-commercial catch levels. **AFL** agrees that there has been an inconsistent approach to the application of “precaution in the absence of information”. **Sanford** also note that it is very difficult for the Minister to make a TAC reduction until reliable information is available.

- 129 In the context of the proposals to amend the amateur fishing regulations, SeaFIC states an expectation that a very precautionary approach be adopted in decision making – “precaution in this case favouring sustainability” – and yet the IPP process a range of measures designed to increase recreational utilisation.
- 130 **Royal Forest and Bird Protection Society** and **ECO** state that international agreements and measures have further articulated the precautionary approach. Section 5 of the Fisheries Act requires decision makers to act in a manner consistent with “New Zealand’s international obligations relating to fishing”. Amongst these obligations is the United Nations Food and Agriculture Organisation (FAO) Code of Conduct on Responsible Fisheries (1995) which states that:
- “6.5 States and subregional and regional fisheries management organizations should apply a precautionary approach widely to conservation, management and exploitation of living aquatic resources in order to protect them and preserve the aquatic environment, taking account of the best scientific evidence available. The absence of adequate scientific information should not be used as a reason for postponing or failing to take measures to conserve target species, associated or dependent species and non-target species and their environment.”*
- 131 Royal Forest and Bird Protection Society and ECO note Article 7.5 of the Code of Conduct further set out what constitutes precautionary management in fisheries.
- 132 Royal Forest and Bird Protection Society and ECO also submit the United Nations Implementing Agreement on High Seas Fisheries and Straddling Stocks<sup>11</sup> includes a requirement on “coastal States and States fishing on the high seas [to] apply the precautionary approach in accordance with article 6.” Article 6 includes requirements for:
1. *States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fishstocks and highly migratory fishstocks in order to protect the living marine resources and preserve the marine environment.*
  2. *States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.”*
- 133 Therefore, where information is uncertain or unknown about the state of a stock or biological information, the decision should favour lower catch limits or more environmentally stringent regulations.

### **MFish response**

- 134 Submissions hinge on two different aspects of precaution: the exercise of caution in decision-making when faced with uncertainty, anecdotal or unreliable information; and, the interpretation of precaution as favouring sustainability when information is uncertain.

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<sup>11</sup> The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (in force as from 11 December 2001).

- 135 SeaFIC appear to suggest that a single information standard should apply in all cases and to all sectors, and that unless that standard is met then no action is taken.
- 136 The information principles in s 10 of the Act expressly state that the decision should be cautious when information is uncertain, unreliable, or inadequate. Fisheries management is all about managing in an information-deficient situation. The task is how to act in light of that context. The Act does not prevent action in the absence of information or complete information; rather measures should still be taken to give effect to the purpose of the Act.
- 137 Less than full information suggests caution in decision-making, not deferral of a decision completely if information standards are not met. If action was postponed where information is incomplete, inadequate, or unreliable, then there would be no ability to act. While arguably this would ensure a level of consistency, it would impose a significant fetter on the ability of fisheries managers (MFish and external) and the Minister to act. Section 10 directs the Minister to act more cautiously when information is uncertain – the emphasis is on how to act on information, not to determine when to act.
- 138 SeaFIC also contend that the precautionary approach is somehow applied differently depending on the sector concerned. Hence, they suggest that the precautionary approach is used to stymie industry measures, but the same uncertainty of information is used as a basis not to preclude non-commercial initiatives. MFish rejects any contention of an inconsistent approach based on the particular fishing sector involved. MFish does not raise or lower the threshold, but instead weighs up the relevant information on a case-by-case basis. An example of the application of information principles in respect of commercial fishing interests is the the Adaptive Management Programme (AMP). The AMP allows for utilisation, despite uncertainty in the available information or the lack of information, in order to generate information about stock response from fishing effort and in so doing to improve stock abundance assessments.
- 139 The overall pattern that emerges from SeaFIC's submission is one of using the information principles and the available information to support TAC/TACC increases or retention of the current TAC/TACCs and opposing TAC/TACC decreases. This could be interpreted as an approach that favours utilisation over sustainability in the sense that where there is doubt, the weight should fall in favour of use of the resource. SeaFIC object to that same degree of uncertainty in the information when used as a basis to propose TAC/TACC reductions.
- 140 There is also an apparent inconsistency in the SeaFIC's submissions. Clearly in the context of commercial measures, SeaFIC favour a utilisation based approach. Whereas in the context of the amateur fishing regulatory proposals, SeaFIC argue for sustainability to be given greater weight. MFish consider that the matter should be founded on principle, not a sector driven approach. As a matter of principle then, SeaFIC should not object to proposals where the information is equivocal to reduce TAC/TACCs in favour of sustainability of the resource as a precautionary measure.
- 141 With respect to the Royal Forest and Bird Protection Society and ECO submission regarding the interpretation and implementation of the precautionary approach in the New Zealand system of management, it is MFish's view that the provisions of the

1996 Act, and the proposed exercise of powers under legislation are consistent with New Zealand's international obligations.

- 142 However, MFish accepts that the generally accepted international meaning of the 'precautionary approach', which is geared towards cautious management to minimise environmental or sustainability risk, is different from the s 10 direction that decision makers should be cautious when information is uncertain, unreliable or inadequate. That uncertainty exists should not be used as a reason for postponing or failing to take appropriate management measures to further the purpose of the Act – which includes both utilisation and sustainability.
- 143 MFish manages fisheries and advises the Minister in accordance with the Fisheries Act. The intent of Parliament in framing the Act was to include caution in the information section, and to ensure that uncertainty did not frustrate the need to manage. To drive an alternative interpretation of caution or precaution through stock management papers is inappropriate; such discussions must form part of primary legislation and be debated by Parliament.
- 144 The Royal Forest and Bird Protection Society and ECO submission correctly notes s 5 of the Act, which discusses the obligation to act in a way consistent with international obligations. MFish interprets this section to mean that where there is a choice in the interpretation of the 1996 Act, or the exercise of discretion, the decision maker must choose the option that is consistent with New Zealand's international obligations relating to fishing.

## Use of Anecdotal Information

### *Submissions*

- 145 In both the kahawai and amendment of amateur fishing regulations papers, **SeaFIC**, **Pagrus Auratus**, **Te Ohu** and **AFL** identify an over-reliance on anecdotal information, improper weighting given to anecdotal information, and an almost complete lack of credible supporting information.
- 146 **Northern Inshore** support SeaFIC's views that anecdotal evidence is not given the appropriate weighting and that by presenting all options as if of equal merit is misleading. Northern Inshore state MFish has a responsibility to substantiate (where possible) the anecdotal evidence, present balanced views to the Minister from all sectors, and weight anecdotal information appropriately with other sources of information.
- 147 Northern Inshore note MFish state that there is anecdotal evidence of localised depletion in certain areas and increased fishing effort in some areas to maintain catch levels. Northern Inshore submit there is no further information or analysis to enable the decision maker to place this "anecdotal evidence" into the context of management at the stock level. Northern Inshore asks if MFish has presented all anecdotal opinions, including anecdotal reports that present contradictory views.
- 148 Northern Inshore submits that in general, preference has been to give anecdotal evidence lower weight relative to the available scientific evidence, simply because of its inherent subjectivity. Northern Inshore believes that there is insufficient

information presented to the Minister for him to be able to consider the anecdotal evidence and accord it any weight in his decision making.

- 149 Te Ohu submit there is inappropriate use of information in the IPPs, particularly in the case of the Kaipara stocks but also in the Kahawai stocks. MFish have relied on the presentation of anecdotal information provided by the local community and “some non-commercial fishers”, to create the impression of uncertainty in these fisheries. MFish have presented no anecdotal information from the commercial sector and have not accorded correct weighting to the catch sampling information which has been reviewed by the Pelagic working group – both of which do not concur with the recreational view of a decline.
- 150 Te Ohu submits that MFish has not applied the generic policy on the hierarchy of information and how it should be applied in the setting of TACs. Clearly the information adopted in the plenary report is accorded greater weighting in the MFish policy; in fact it provides the basis for TAC setting. Anecdotal information, particularly if it has not been adopted in the plenary report, should be taken into account but not provided the same weighting. Te Ohu submits that greater weighting has been placed on the anecdotal information. Te Ohu further submits that anecdotal information has been used as a rationale to support claims of uncertainty, and that this uncertainty is then used to justify the proposed precautionary options.

### ***MFish response***

- 151 MFish considers all information in the context of management decisions. The weighting assigned to particular information is subject to the certainty, reliability, and adequacy of that information. MFish accepts that as a general principle, information on stock status outlined in the MFish Fishery Assessment Plenary Report should be given significant weighting. The information presented in the report is subject to a robust process of scientific peer review. In contrast, anecdotal information on stock status typically should receive lesser weighting than the Plenary Report.
- 152 MFish believes that corroborated anecdotal information has a useful role to play both in the stock assessment process and in the management process. Anecdotal information may be used to assist in "groundtruthing" stock assessment modelling results, and is reported in the Plenary when available. Although all sector groups are invited to participate in the stock assessment process, recreational, environmental and customary interests are often not represented due to a lack of resources. Therefore, anecdotal information from these groups may not be available at the time of the assessment to help interpret the quantitative modelling results. The management process takes account of all relevant inputs, and MFish believes that the anecdotal information in question provides useful, supplementary information to that contained in the Plenary, and should be taken into consideration. In particular, anecdotal information on local availability of the stock in areas of importance to customary and recreational fishers may be especially useful.
- 153 It is quite plausible for the stock assessment information contained in the Plenary Report on a stock-wide basis not to reflect local variations in catch rates of each fishing sector. Consideration of anecdotal information provides a useful additional

snap-shot of the fishery. For example, this includes anecdotal information provided by Taranaki region commercial interests in the SNA 8 fishstock paper.

- 154 There are a number of fisheries reviewed in the IPP where the stock assessment information does not show any demonstrable sustainability problem. However, there is anecdotal information that presents a different picture of the fishery. Both sets of information need to be considered and weighed accordingly.

## **Consideration of the Purpose and Principles of The Act**

- 155 The **Royal Forest and Bird Protection Society** and **ECO** submit that the proposals do not consider all the obligations on a decision-maker under ss 5, 8 to 10, and 11 to 14 Fisheries Act 1996. Some of the considerations are a backward step over last year - there is little consideration of international obligations (s 5) and s 9 obligations, especially marine biodiversity and habitat of particular significance to fisheries management.
- 156 The Royal Forest and Bird Protection Society and ECO state that MFish needs to consider how environmental considerations are better integrated with pure single stock assessment considerations. Every year the inclusion of bycatch, adverse effects of fishing, maintenance of biodiversity, etc, tend to be after-thought considerations rather than central issues to setting catch limits. MFish also needs to consider the obligations on future generations and the need to avoid, remedy or mitigate the effects of fishing on the marine environment.
- 157 The Royal Forest and Bird Protection Society and ECO also note that there are many issues that MFish has yet to adequately respond to new information on the impacts of fishing on the marine environment. These include:
- a) Extension and permanent entrenchment of the closure in Spirits and Tom Bowling Bay based on the more recent NIWA report for MFish (Cryer et al 2000).
  - b) Measures to maintain marine biodiversity and to avoid, remedy or mitigate the impacts of the scampi fishery on benthic species (see pages 56-58 of Cryer et al 1999).
  - c) Measures to maintain marine biodiversity and to avoid, remedy or mitigate the impact of oyster dredging in the Foveaux Strait (Cranfield, Michael and Doonan 1999).
  - d) Measures to maintain marine biodiversity and to avoid, remedy or mitigate the impact of fishing on the bryozoan thickets off Otago Peninsula (Batson and Probert, 2000).
  - e) Measures to maintain marine biodiversity and avoid, remedy or mitigate the adverse impacts of commercial scale bottom impacting methods including trawling and dredging on benthic species (see *Conservation Biology* December 1998 (Vol 12, No 6).

### ***MFish response***

- 158 The statutory obligations and the way in which they relate to proposals made in the IPP are described in some detail at the front of that document. Specific discussion

relates to International Obligations (s 5(a)), The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (s 5(b)), the Purpose of the Act (s 8), including the requirement to maintain the potential of fisheries to meet the reasonably foreseeable needs of future generations, the Environmental Principles (s 9) and the use of sustainability measures (s 11).

- 159 Environmental considerations such as the adverse effects of fishing and maintenance of biodiversity are broad issues facing all fisheries. As such they are more appropriately and effectively addressed at a national level than when considering single stock assessments. MFish is currently working on these two issues through development of a Marine Protected Area Policy and a Benthic Impact Strategy respectively. The Strategy for Managing the Environmental Effects of Fishing has just been released, and is now being implemented.

## **Compliance Plans**

### ***Submissions***

- 160 **Northern Inshore** note that for all stocks, MFish consider other sources of fishing related mortality and identify known sources of risk and provide estimations of the quantum of removals of other fishing related mortality. The value of removals based on current port price for the stocks represent significant economic loss from the fisheries. Northern Inshore believe that having identified the nature and extent of illegal removals from the fishery, it is incumbent on MFish to provide compliance plans that will reduce or constrain the removals from these fisheries to the allowances made as part of the sustainability measures

### ***MFish response***

- 161 MFish acknowledges the impact that the adjustment to the TAC for other fishing related mortality has on the economic viability of the inshore fisheries in FMAs 1 & 9. However, MFish prosecutions and intelligence information suggest that incidences of illegal activity are high across these fisheries. Limited resources mean that it is not possible to develop specific compliance plans for the FLA1, GMU1 and SPO1 fisheries at this time but MFish would support Northern Inshore working with their members to address the problem of illegal fishing. MFish will continue to focus its compliance efforts on illegal fishing at both the national and district level.
- 162 MFish notes that it is not yet in a position to quantify the extent of illegal removals from the fishery. However, MFish is currently working on developing a generic methodology to estimate the quantity of fish removed illegally, which can then be applied to specific fisheries.